



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



OCT 17 1989

William H. Adams, M.D.
Marshall Islands Medical Program
Brookhaven National Laboratory
Clinical Research Center - Medical Department
Upton, Long Island, New York 11973

Dear Dr. Adams:

Please forgive the lengthy delay in responding to your letters of July 10 and August 1, 1989, regarding Marshallese citizens determined to have had recent illnesses which might be covered by the provisions of P.L. 95-134, and eligible for a nuclear claims payment. It was necessary to pursue this issue with the assistance of the Department's Solicitor before responding.

I am enclosing, for your information, a copy of an opinion issued by the Associate Solicitor for General Law. This opinion concludes that the provisions of the Compact of Free Association (P.L. 99-239 - Section 177) preempted Section 104 of P.L. 95-134. In view of this opinion, which determined that the Claims Adjudication Process established by Article IV of the 177 Agreement is the exclusive means for determining future claims, the Department of the Interior will not accept any further claims from residents of the Republic of the Marshall Islands.

Sincerely,

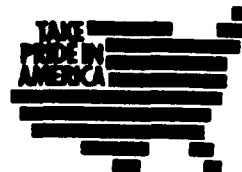
Larry L. Morgan
Director, Legislative & Public Affairs
Territorial and International Affairs

cc: Mr. John Rudolph, DOE
Mr. Harry Brown, DOE
Mr. J.H. Dryden, DOE

John Rudolph's Files
Letter Files
Letters - Marshall Islands 1989



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WASHINGTON, D.C. 20240

SEP 15 1989

ASST SECY - T.I.
RECEIVED

SEP 19 1989

OTA.GL.0042

MEMORANDUM

To: Assistant Secretary, Territorial and International Affairs

From: Associate Solicitor, Division of General Law

Subject: Payments to Rongelap/Utirik Persons for Radiation Related Medical Procedures or Conditions

By memorandum of August 21, 1989, you asked us to determine whether two Marshallese individuals were qualified for compensation under the provisions of Section 104 of P.L. 95-134 of October 15, 1977, 91 Stat. 1159. These individuals had surgery performed in June or July, 1989, for conditions that may have been radiation related. You attached with your memorandum letters of July 10 and August 1, 1989, from the Director, Marshall Islands Medical Program, recommending that these individuals be considered for compensation. You ask whether the Compact Section 177 agreement precludes further payments by this Department under P.L. 95-134.

The Compact of Free Association was enacted into federal law by P.L. 99-239 of January 14, 1986, 99 Stat. 1770. Under Section 177 of the Compact Act, 99 Stat. 1781, and the Section 177 agreement which was incorporated into the Act, the United States accepted responsibility for paying just compensation for loss or damage resulting from the nuclear testing program. We conclude for the reasons that follow that the Claims Adjudication Process established by Article IV of the Section 177 Agreement constitutes the exclusive means by which the two individuals involved here may seek compensation. The provisions of Section 104 of P.L. 95-134 have been preempted by the Compact and the Section 177 Agreement.

As you know, these claims arose from the nuclear testing program which the United States conducted in the Northern Marshall Islands from June 30, 1946 to August 18, 1958 as authorized by the Atomic Energy Act of 1946, P.L. 79-585, 60 Stat. 755. The individuals involved were inhabitants of two of the four atolls which were downwind from the sites of the nuclear tests. The inhabitants of these atolls were removed and relocated for periods of time, and many of them have suffered ill health effects due to unexpected exposure to radioactive fallout.

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In the time period between the nuclear testing program and the enactment of the Compact of Free Association in 1986, the United States provided \$150 million for a health care program, island rehabilitation, relocation assistance, agriculture programs, and other payments to affected individuals and communities. In particular, Section 104(a) of P.L. 95-134 authorized the Secretary of the Interior to make payments of up to \$25,000 to individuals who had suffered physical injury or harm from a radiation related cause.

The compensation provisions of P.L. 95-134 and other statutes, however, have been superseded by the Section 177 agreement to the Compact of Free Association. As stated in Article I Section 1, this agreement provides "in perpetuity, a means to address past, present and future consequences of the Nuclear Testing Program." As further provided in Article I, the United States has paid \$150 million to the Republic of the Marshall Islands to establish a claims settlement fund. Under Article IV of the agreement, the Republic of the Marshall Islands has established a Claims Tribunal with "jurisdiction to render final determination upon all claims past, present and future, of the Government, citizens and nationals of the Marshall Islands which are based on, arise out of, or are in any way related to the Nuclear Testing Program."

Article X provides that the agreement constitutes the final settlement of all claims, past, present and future, related in any way to the Nuclear Testing Program.^{1/} Article XII of the Agreement provides that federal courts have no jurisdiction to consider any claims based on the Nuclear Testing Program, and it directed the dismissal of any claims then pending in the courts of the United States. In People of Enewetak v. United States, 864 F.2d 134 (Fed. Cir. 1988), cert. denied _____ U.S. _____ 57 L.W. 3827 (June 19, 1989), the Federal Circuit Court of

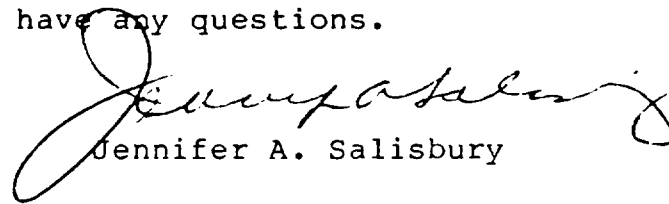
^{1/} Article X of the agreement states:

This agreement constitutes the full settlement of all claims, past, present and future, of the Government, citizens and nationals of the Marshall Islands which are based upon, arise out of, or are in any way related to the Nuclear Testing Program, and which are against the United States, its agents, employees, contractors and citizens and nationals, and of all claims for equitable or any other relief in connection with such claims including any of those claims which may be pending or which may be filed in any court or other judicial or administrative forum, including the courts of the Marshall Islands and the courts of the United States and its political subdivisions.

Appeals upheld both the exclusivity and the constitutionality of the Section 177 agreement as a means for settling the nuclear testing claims.

The Claims Adjudication Process established by Article IV of the Agreement is the exclusive means for determining whether compensation is appropriate for the two individuals involved here. In view of this conclusion, it is unnecessary to discuss whether these two cases would meet the standards for payment under Section 104 of P.L. 95-134.

Please let me know if you have any questions.



Jennifer A. Salisbury